

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

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UNITED STATES OF AMERICA,

Plaintiff,

vs.

BRIAN FIERRO,

Defendant.

Case No.: 2:09-cr-00240-RLH-RJJ

**ORDER**

(Motion for DNA Testing #95)

Before the Court is *pro se* Defendant Brian Fierro's **Motion for DNA Testing** (#95, filed June 14, 2012) pursuant to the Innocence Protection Act of 2004, 18 U.S.C. §§ 3600. The Court has also considered the United States of America's Opposition (#97, filed June 29). Fierro did not file a Reply.

On November 4, 2009, a jury found Fierro guilty of one count of Interference with Commerce by Robbery, one count of Discharging a Firearm During a Crime of Violence, and two counts of Felon in Possession of a Firearm. The Court later sentence Fierro to prison and entered an order of forfeiture for a Sturm Ruger Model Security Six .357 Magnum revolver (the "Ruger") and its ammunition.

Fierro has now filed a motion for DNA testing of the Ruger, which was in the possession of the Bureau of Alcohol, Tobacco, Firearms, and Explosives ("ATF") while Fierro

1 pursued an appeal of his conviction. However, once the Ninth Circuit Court of Appeals affirmed  
2 Fierro's conviction, the ATF destroyed both the Ruger and its ammunition pursuant to Department  
3 of Justice policies. Thus, Fierro's request that the Ruger and its ammunition be tested for DNA is  
4 moot.

5 Accordingly, and for good cause appearing,

6 IT IS HEREBY ORDERED that Fierro's Motion for DNA Testing (#95) is  
7 DENIED as moot.

8 Dated: August 2, 2012

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11 **ROGER L. HUNT**  
12 **United States District Judge**  
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